

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

J. BRUCE ALVERSON, LTD., a Nevada)
Corporation, d/b/a ALVERSON, TAYLOR,)
MORTENSEN & SANDERS,)
)
Plaintiff,)
vs.)
)
NORTEK, INC., a Delaware Corporation,)
)
Defendant)
_____)

Case No.: 2:15-cv-2141-GMN-CWH

ORDER

Pending before the Court is the Motion to Dismiss for Lack of Jurisdiction (ECF No. 5) filed by Defendant Nortek, Inc. (“Nortek”). Plaintiff, J. Bruce Alverson, Ltd., (“Alverson”) subsequently filed an Opposition. (ECF No. 12). Thereafter, Nortek filed a Reply. (ECF No. 14). For the reasons discussed in this Order, Nortek’s Motion to Dismiss for Lack of Jurisdiction is GRANTED.

I. BACKGROUND

Alverson filed its Complaint alleging causes of action against Nortek for Breach of Contract, Unjust Enrichment, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief. (Compl. ECF No. 1-1). Alverson is incorporated under the laws of Nevada and practices law in Clark County, Nevada. (Compl. ¶ 2, ECF No. 1-1). Nortek is a Delaware corporation with its headquarters and principal place of business in Rhode Island. (Mot. to Dismiss 1:25-27, ECF No. 5).

Alverson alleges it entered into an agreement with Caradon Doors & Windows, Inc. (“Caradon”), a wholly-owned subsidiary of Nortek, to provide legal defense in three specific construction defect lawsuits. (Compl. ¶ 4, ECF No. 1-1). Alverson alleges Caradon used its

1 legal defense services without remitting payment, which directly and proximately caused
2 Alverson damages in the approximate amount of \$144,511.06, with costs and interest. (*Id.* at
3 2:5-19, 3:1-7).

4 In its Motion to Dismiss, Nortek argues that the claims against it should be dismissed for
5 lack of personal jurisdiction, as Nortek does not do business in Nevada and does not have any
6 agents, offices, or employees in Nevada. (Mot. to Dismiss 2:9-14). In its Response, Alverson
7 argues that the Court may properly exercise personal jurisdiction in this case because Nortek's
8 subsidiaries engage in business in Nevada, and many of Nortek's products ultimately reach
9 Nevada consumers through dealers and distributors. (Plaintiff's Resp., ECF No. 12). In the
10 alternative, Alverson requests that if the Court is inclined to grant Nortek's Motion, it should
11 instead "enter a stay of the Motion to Dismiss so that the parties may conduct jurisdictional
12 discovery to determine the extent of [Nortek's] contact with the State," and the control Nortek
13 maintains over its subsidiaries. (*Id.* at 11:1-4).

14 **II. LEGAL STANDARD**

15 A defendant may move to dismiss an action for lack of personal jurisdiction under Rule
16 12(b)(2) of the Federal Rules of Civil Procedure. "Although the burden is on the plaintiff to
17 show that the court has jurisdiction over the defendant, in the absence of an evidentiary hearing,
18 the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the
19 motion to dismiss." *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 671-72
20 (9th Cir. 2012).

21 To establish personal jurisdiction where in the absence of an applicable federal statute,
22 there must be personal jurisdiction under the laws of the state where it is asserted, and the
23 exercise of jurisdiction must satisfy due process. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653
24 F.3d 1066, 1073 (9th Cir. 2011). In Nevada the jurisdictional analysis is essentially the same as
25 under the Due Process Clause, U.S. Const. amend. XIV, § 1, because Nevada's long arm

statute, Nev. Rev. Stat. § 14.065(1), by its terms, extends personal jurisdiction over defendants to the limits of the state and federal constitutions. *See Trump v. Eighth Jud. Dist. Ct.*, 857 P.2d 740, 747 (Nev. 1993).

“There are two types of personal jurisdiction, specific and general.” *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986). “General personal jurisdiction, which enables a court to hear cases unrelated to the defendant’s forum activities, exists if the defendant has ‘substantial’ or ‘continuous and systematic’ contacts with the forum state.” *Id.* (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). This standard is “fairly high” and uncommonly met. *Id.* Alternatively, specific jurisdiction is analyzed under a three-prong test in the Ninth Circuit:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant’s forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

CollegeSource, 653 F.3d at 1076 (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). The plaintiff bears the burden of satisfying the first two prongs, and if this burden is met, the burden then shifts to the defendant to “set forth a ‘compelling case’ that the exercise of jurisdiction would not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)).

If a plaintiff can prove by a prima facie case the defendant had the necessary minimum contacts in the forum to establish personal jurisdiction, but is attempting to impute a subsidiary’s claims to its parent company, then the plaintiff bears the burden of showing the entities are not separate, rather the “subsidiary is the parent’s alter ego.” *Harris v. Rutsky & Co.*

1 *Ins. Services, Inc. v. Bell & Clements, Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003). A subsidiary
 2 is an “alter ego” of its parent company if it “acts as a general agent of the parent.” *Id.* To show
 3 the subsidiary acts as a general agent of the parent company, “the [p]laintiff must make out a
 4 prima facie case [showing] ‘(1) that there is such unity of interest and ownership that the
 5 separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their
 6 separate identities] would result in fraud or injustice.’” *Doe v. Unocal Corp.*, 248 F.3d 915, 926
 7 (9th Cir. 2001) (quoting *American Telephone & Telegraph Co. v. Compagnie Bruxelles*
 8 *Lambert*, 94 F.3d 586, 591 (9th Cir. 1996)). “The plaintiff must show . . . the parent exercises
 9 such control over the subsidiary so as to ‘render the latter the mere instrumentality of the
 10 former.” *Harris v. Rutsky & Co. Ins. Services, Inc.*, 328 F.3d 1122, 1135 (9th Cir. 2003).

11 “A parent-subsidary relationship alone is insufficient to attribute the contacts of the
 12 subsidiary to the parent” to establish personal jurisdiction. *Harris*, 328 F.3d 1122, 1134 (9th
 13 Cir. 2003) (citing *Unocal*, 248 F.3d at 925). Similarly, a parent company can lend itself to
 14 activities such as “provid[ing] financing to its subsidiary . . . referring to its subsidiaries as
 15 divisions of the parent in annual reports,” reviewing and approving subsidiary major business
 16 decisions, sharing staff and offices, and “plac[ing] its own directors on the subsidiary’s board”
 17 and still not subject itself to an alter-ego status. *In re W. States Wholesale Nat. Gas. Litig.*, 605
 18 F. Supp. 2d 1118, 1133 (D. Nev. 2009). Therefore, a high burden exists in proving alter-ego
 19 status. *Unocal*, 248 F.3d at 926-28.

20 The Ninth Circuit has allowed jurisdictional discovery where preliminary evidence
 21 showed “a minimum factual showing” of a potential alter-ego relationship. *Pfister v. Selling*
 22 *Source, LLC*, 931 F. Supp. 2d 1109, 1118 (D. Nev. 2013) (citing *Harris*, 328 F.3d 1122, 1135
 23 (9th Cir. 2003) and *Martinez v. Manheim Cen. Cal.*, 2011 WL 1466684, at *5 (E.D. Cal. Apr.
 24 18, 2011)). However, “Where a plaintiff’s claim of personal jurisdiction appears to be both
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1 attenuated and based on bare allegations in the face of specific denials made by the defendant[],
2 the Court need not permit even limited discovery.” *Id.* at 1117.

3 **III. DISCUSSION**

4 In its Response, Alverson argues that the Court may properly exercise personal
5 jurisdiction over Nortek because (1) Nortek is merely an alter-ego of Caradon, and (2)
6 regardless of Caradon’s alter-ego status, Nortek maintains sufficient contacts with Nevada for
7 the Court to exercise general jurisdiction.¹ The Court will address each of these arguments in
8 turn.

9 **A. Alter-Ego**

10 In order to demonstrate that Caradon was Nortek’s alter ego, Alverson must show that
11 the Nortek exercised control so extensive that Caradon was rendered a “mere instrumentality”
12 of Nortek. *Harris v. Rutsky & Co. Ins. Services, Inc.*, 328 F.3d 1122, 1135 (9th Cir. 2003). To
13 make this prima facie showing, Alverson bears the burden of demonstrating that the Nortek was
14 directly involved in Caradon’s day-to-day operations and internal affairs. *In re W. States*
15 *Wholesale Nat. Gas. Litig.*, 605 F. Supp. 2d 1118, 1132 (D. Nev. 2009) (citing *Kramer Motors,*
16 *Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980). However, even “total
17 ownership and shared management personnel are alone insufficient to establish the requisite
18 level of control.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015).

19 In *Ranza*, the Ninth Circuit held that a subsidiary could not impute liability to its parent
20 company for the purpose of personal jurisdiction because the plaintiff in that case could not
21 establish an alter-ego relationship. *Id.* at 1075. The parent company’s involvement with its
22 subsidiary included: controlling the subsidiary’s budgets and large purchases, overseeing the
23 subsidiary’s marketing activities, and having some of the subsidiary’s employees indirectly
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25 ¹ The Court declines to perform a specific-jurisdiction analysis regarding Nortek’s direct activities in Nevada because Alverson does not argue that its claims are in any way related to these activities.

1 report to the parent company's supervisors. *Id.* at 1074. The court in *Ranza* found that because
2 the parent company did not control the subsidiary's daily operations and each entity had its own
3 formalities, the subsidiary was not merely an alter ego of the parent company. *Id.* Therefore,
4 the subsidiary could not attribute its claims to the parent company to establish personal
5 jurisdiction. *Id.* Similarly, in *In re Western States Natural Gas*, the court held that a parent
6 company's referring to a subsidiary as one of its "divisions" in annual financial reports, sharing
7 office space with the subsidiary, and reviewing and approving the subsidiary's major decisions
8 would not establish an alter-ego relationship between the parent and subsidiary. 605 F. Supp.
9 2d at 1133.

10 In this case, Alverson provides several examples of how it believes Nortek and Caradon
11 operated as a single corporate entity. (Plaintiff's Resp., 6:9-8:4, ECF No. 12). These examples
12 include the fact that (1) Nortek reported its own income, losses, and profits together with those
13 of its subsidiaries in its public filings; (2) Nortek generally maintained financial control of its
14 subsidiaries; and (3) several members of the boards of Nortek's subsidiaries also worked at
15 Nortek's head office. (*Id.*).

16 Similar to *Ranza* and *In re Western States Natural Gas*, Alverson's allegations in the
17 instant case do not establish that Caradon was an alter ego of Nortek. Indeed, the oversight
18 provided by Nortek as well as its shared leadership are consistent with Nortek's status as an
19 investor in Caradon, and do not indicate that Caradon was a "mere instrumentality" of Nortek.
20 See *Ranza*, 793 F.3d at 1074-75; *In re Western States Natural Gas*, 605 F. Supp. 2d at 1133.
21 Thus, Alverson has failed to satisfy its burden show that Nortek is subject to personal
22 jurisdiction as a result of an alter-ego relationship with Caradon.

23 **A. General Jurisdiction**

24 To invoke general jurisdiction a plaintiff "must meet an 'exacting standard' for the
25 minimum contacts required." *Ranza*, 793 F.3d at 1069. "General . . . jurisdiction exists where

1 the defendant's activities in the forum state are so substantial . . . continuous [or] systematic
2 that it may be deemed present in the forum and hence subject to suit over claims unrelated to its
3 activities there." *Firouzabadi v. First Judicial Dist. Court In & For Carson City*, 885 P.2d 616,
4 619 (Nev. 1994); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408,
5 414 (1984). The Ninth Circuit held in *Ranza* that the defendant's selling products and
6 employing personnel in the forum were insufficient, by themselves, to establish general
7 jurisdiction. *Ranza*, 793 F.3d at 1070.

8 Similarly, Alverson has failed to demonstrate that Nortek's activities render it "at home"
9 in Nevada. Alverson's evidence demonstrates only that Caradon and other Nortek subsidiaries,
10 rather than Nortek itself, directly conduct business in Nevada. Furthermore, Alverson's claim
11 that numerous Nortek products have ultimately been installed in homes in Nevada is
12 insufficient to establish that Nortek had continuous and systematic contacts of the character
13 necessary to invoke general jurisdiction. Thus, Alverson has failed to satisfy its burden, and
14 the Court cannot exercise general personal jurisdiction over Nortek.

15 **B. Stay for Jurisdictional Discovery**

16 Alternatively, Alverson requests further jurisdictional discovery to allow it to gather
17 evidence to establish jurisdiction. However, if a plaintiff is initially unable to provide evidence
18 to establish a minimum factual showing that an alter-ego relationship exists, then additional
19 jurisdictional discovery is not warranted. *Pfister v. Selling Source, LLC*, 931 F. Supp. 2d 1109,
20 1118-19 (D. Nev. 2013); *see also Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008)
21 (denial of discovery request not an abuse of discretion where request "was based on little more
22 than a hunch that it might yield jurisdictionally relevant facts"). Because Alverson has
23 provided no evidence indicating that Nortek was involved in Caradon's day-to-day operations,
24 or that Caradon failed to conduct its own corporate formalities, the Court finds that Alverson
25 has not satisfied its burden to provide a minimal factual showing indicating the existence of an

1 alter-ego relationship, and therefore its request for additional jurisdictional discovery will be
2 denied.

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Nortek's Motion to Dismiss (ECF No. 5) is
5 **GRANTED**. Alverson's Complaint is hereby **DISMISSED** without prejudice. The Clerk is
6 instructed to enter judgment accordingly and close the case.

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8 **DATED** this 20 day of April, 2016.

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Gloria M. Navarro, Chief Judge
United States District Court